

FILED

MAR 14 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DAVID MEDINA-VALENZUELA,

Defendant - Appellant.

No. 05-50702

D.C. No. CR-05-00015-NAJ

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Napoleon A. Jones, District Judge, Presiding

Submitted March 8, 2006^{**}

Before: CANBY, BEEZER, and KOZINSKI, Circuit Judges

David Medina-Valenzuela appeals the 30-month sentence imposed under the advisory Guidelines scheme following his guilty plea to attempted entry after deportation, in violation of 8 U.S.C. § 1326. He contends that the district court

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

violated his constitutional rights in enhancing his sentence under 8 U.S.C. § 1326(b) and U.S.S.G. § 2L1.2(b)(1)(A) because of facts—a prior aggravated felony conviction and the fact that the conviction preceded his deportation—neither charged in the indictment, proved beyond a reasonable doubt to a jury, nor admitted as part of the guilty plea. He contends that this court should hold that *Almendarez-Torres v. United States*, 523 U.S. 224 (1998), is limited to the precise holding that a prior conviction that increases the maximum penalty need not be alleged in the indictment when the conviction is admitted during a guilty plea, and that *Almendarez-Torres* and this court’s caselaw have been effectively overruled by *Shepard v. United States*, 125 S. Ct. 1254 (2005), and other recent Supreme Court decisions. These contentions are foreclosed. *See United States v. Weiland*, 420 F.3d 1062, 1079 n. 16 (9th Cir. 2005).

AFFIRMED.